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Counsel for Defendant JOSE ANTONIO DEL TORO-SANCHEZ

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE ANTONIO DEL TORO-
SANCHEZ

Defendant.

No. CR-08-0142 SBA

DEFENDANT'S SENTENCING
MEMORANDUM

Date: May 6, 2008

Time: 10:00 a.m.

Court: Honorable Sandra B. Armstrong

On May 6, 2008, Jose Antonio Del Toro-Sanchez intends to plead guilty to the sole charge in the Indictment, a violation of 8 U.S.C. § 1326. By way of background, on April 8, 2008, the Court referred this matter for a criminal-history-only Pre-Plea Presentence Investigation Report. On April 10, 2008, the government submitted for this Court's consideration a proposed plea agreement between the parties, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), whereby Mr. Del Toro-Sanchez would obtain the standard "fast track" agreement, which is the low-end of the guideline range, as adjusted for early and expedited entry of plea. The sentencing guidelines calculation is contained in the parties' plea agreement.

Undersigned counsel received the "Modified Presentence Investigation Report - Criminal History Only" report on April 28, 2008 and reviewed it with Mr. Del Toro-Sanchez and an

1 interpreter at Santa Rita Jail on April 29, 2008. Mr. Del Toro-Sanchez has a few legitimate
2 questions about the dates and timing of two of his prior convictions (which potentially could affect
3 his criminal history category) that undersigned counsel cannot answer without first reviewing the
4 underlying conviction documents. U.S. Probation has some but not all of those documents, but
5 believes that it can obtain them by Monday, May 5, 2008, and undersigned counsel will try to
6 obtain those documents as well.

7 Assuming that undersigned counsel can review those documents by the close of business
8 May 5, 2008, the defense will be prepared to proceed to sentencing on May 6, 2008 at 10:00 a.m.,
9 as the parties have jointly requested. If additional time is needed to obtain those documents and
10 thus for Mr. Del Toro-Sanchez to say with confidence that he has no objection to the Presentence
11 Investigation Report, then the parties will request that the matter be continued for two or three
12 weeks to allow for those documents to be reviewed and for a further meeting between undersigned
13 counsel and Mr. Del Toro-Sanchez.

14 Mr. Del Toro-Sanchez's final Offense Level is 6, and his Criminal History Category is IV,
15 resulting in a guideline range of 6 to 12 months in Zone B. But for his immigration status, he
16 would be eligible to serve this sentence in the community, but the parties agree that in light of all
17 of the circumstances of the case, a sentence of six months of BOP custody is the appropriate
18 resolution for this case. As Mr. Del Toro-Sanchez will be deported, he will not be supervised
19 upon his release from custody, though he will be on "supervised release." If the Court wishes to
20 have any more personal information about Mr. Del Toro-Sanchez for the purposes of sentencing,
21 undersigned counsel can try to answer any questions that the Court has on May 6, 2008, or the
22 matter can be continued for a week or two to enable the defense to obtain the necessary

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1 information fo the Court.

2 Dated: May 1, 2008

3 Respectfully submitted,

4 BARRY J. PORTMAN
Federal Public Defender

5 /S/

6 SHAWN HALBERT
7 Assistant Federal Public Defender